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OFFICE OF PETITIONS

In re Application of
David P. Vellante et al.
Application No. 10/053,304
Filed: November 7, 2001
Attorney Docket No. ITC 2-002

DECISION ON PETITION
UNDER § 1.183

This is a decision on the petition, filed June 26, 2006 (certificate of mail dated June 22, 2006) under 37 CFR § 1.183 for acceptance of a supplemental declaration without the signatures of all inventors as required by § 1.67.¹

The petition is **DISMISSED**.

The supplemental declaration filed June 26, 2006 is signed, in combination, by joint inventors Vallente, Floyer and Swec. The supplemental declaration identifies joint inventor Gershenson by name, address and citizenship; however, the declaration is not signed by inventor Gershenson. All of the joint inventors, including Gershenson, signed the original declaration for patent filed in this application, pursuant to § 1.63(d).

Petitioners assert that joint inventor Gershenson has been presented with the Supplemental Declaration but that he refuses to sign it. However, his last known address, nor any details regarding the presentation or the refusal accompany the petition thus, no showing that waiver of the requirement for inventor Gershenson's signature on the supplemental declaration is warranted.

The supplemental declaration provided is not therefore in compliance with 37 CFR § 1.67.

Since the response to the non-Final Office Action in the form of a supplemental declaration is not in compliance with 37 CFR § 1.67 and since the maximum period obtainable for extensions of time to respond to the non-Final Office Action mailed December 22, 2005 has expired, the application has become abandoned by operation of law.

¹The supplemental declaration was a requirement set out in a non-Final Office Action mailed December 22, 2005 and was submitted with a request for a three month extension of time.

Revival of the application may be petitioned for under 37 CFR 1.137(a)² or 37 CFR 1.137(b),³ which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents

²A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

³Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

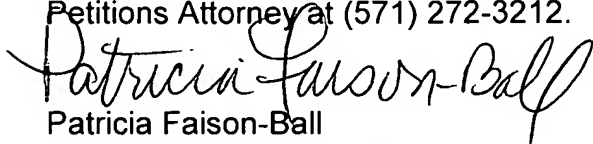
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions